IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12620 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 2 - Petitioner(s)
Versus
DR S G TRIVEDI RETD.READER PHYSICS DIVISION & 1 - Respondent(s)

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Appearance :
MS ML SHAH, AGP for Petitioner(s) : 1 - 3.
MR GM JOSHI for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2.
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/03/2006

ORAL JUDGMENT

1.In the present petition, the State Government has challenged a decision of the Gujarat Universities Services Tribunal rendered on 29-03-2003 in application

no. 18/2002 filed by the respondent no.1 herein.

2. Short facts leading to the present petition are that respondent no.1 initially joined as a Lecturer in R.P. Arts/Commerce/Science College at Khambhatt on 15-06-1964 and was there till 14-06-1966. He thereafter, worked as Lecturer in Navyug Science College, Rander at Surat from 15-06-1966 to 30-09-1984. The petitioner worked as a Reader with South Gujarat University from 01-10-1994 to 30-10-2000. He retired from service on 30-10-2000.

2.1 It was the case of the respondent no.1 that he is entitled to receive pension and other benefits pursuant to the pension scheme introduced by the State Government in the teaching staff of the University and other affiliated aided colleges vide resolution dated 15-10-1984. Since the authorities did not release the pension of respondent no.1, he filed application no.18/2002 before the Gujarat Universities Services Tribunal. The Gujarat Universities Services Tribunal allowed the application by order dated 29-03-2003 which has been challenged by the State Government in the present petition.

3.So far as factual aspects of the matter are concerned, there is hardly any dispute between the parties. Service record of the petitioner therefore, is not in dispute. It is also not in dispute that on 15-10-1984, State Government evolved a policy for granting pensionary benefits to the teaching staff of the University and other private affiliated aided Arts, Science and Commerce Colleges. Some of the salient features of the said scheme relevant for our purpose are as follows :

(i) For the members of the existing staff recruited before 01-04-1982 and those who are recruited on or after 01-04-1982 but prior to the date of issuance of the resolution, they had to exercise their option within a period of one year from the date of resolution, either to continue in contributory provident fund scheme or to come under the pension scheme framed under resolution dated 15-10-1984. It was stated that option once exercised would be final. The resolution further records that the staff members who do not exercise the option within stipulated period, shall be deemed to have opted for the retention of benefits available to them before 01-04-1982. In short non exercising of option for being brought over to

pension scheme was treated as disinclination of the employee to be governed by such a scheme.

(ii) Resolution further provides that for those staff members who opted for the pension scheme, they shall have to join GPF scheme and their share in the GPF together with interest thereon shall be credited to their account.

(iii) The amount of contribution paid by the University or management for the CPF Scheme together with interest thereon standing at the credit of the member of teaching staff, opting for the pension scheme, should be credited to the State Government within a period of two months.

(iv) In case of those staff members who have retired or resigned after 01-04-1982 but before the date of resolution and who have received their CPF amount including the employees contribution and who have opted for pension scheme had to account for employees contribution to the CPF and same was adjusted against arrears of pension and D.C.R.C. amount payable to the retiree.

(v)It was further provided in para.4 that the member of the staff recruited on or before 1st April, 1982 shall automatically be governed by this scheme and they will not be allowed to opt for CPF Scheme.

(vi)The age of superannuation for retirement for the existing staff was 60 years whereas age of superannuation for the staff that may be recruited from 01-10-1984 was 58 years.

3.1 It was the case of the respondent no.1 that pursuant to the said resolution, he was entitled to receive pensionary benefits from authorities since he was recruited after 01-04-1982. According to respondent no.1 therefore, in terms of para.4 of the resolution dated 15-10-1984, applicability of pension scheme was automatic and compulsory.

4.It is not in dispute that in his earlier service, respondent no.1 was governed by CPF Scheme and till the passing of the resolution dated 15-10-1984, there was no pension scheme applicable or available to the respondent no.1 and other similarly situated staff members.

5. Gujarat Universities Services Tribunal interpreting the provisions of said Government Resolution dated 15-10-1984 found that respondent no.1 should receive pension and other consequential benefits flowing from the scheme. The State Government is aggrieved by the said decision and is therefore, in appeal before this Court.

6. The learned AGP contended that respondent no.1 had never opted for the pension scheme pursuant to resolution dated 15-10-1984. She pointed out that in fact by letter dated 10-10-1985, respondent no.1 specifically opted for CPF Scheme and requested that he does not want to switch over to pension scheme and that he should therefore, be continued in service till he crosses age of 60 years. She however, submitted that Government Resolution dated 15-10-1984 specifically provides that those recruited in service before 01-04-1982 shall have to exercise option whether to switch over to pension scheme or to continue in the CPF Scheme. She submitted that respondent no.1 was working in private aided affiliated college from where he resigned and immediately joined South Gujarat University on 01-10-1984. His past services is counted for all purposes as continuous. In that view of the

matter respondent no.1 should be treated to have recruited prior to 01-04-1982 and not on 01-10-1984. He therefore, had to exercise the option which he failed to do and in fact conveyed his preference for his continued coverage under the CPF Scheme. It is therefore, the contention of the learned AGP that Gujarat Universities Services Tribunal erred in allowing the application of respondent no.1.

7. On the other hand learned advocate Shri G.M. Joshi for respondent no.1 supported the decision of the Tribunal. He submitted that respondent no.1 joined services of the Universities only on 01-10-1984. That he therefore, had no option whether to be governed by pension scheme or CPF Scheme and pension scheme was compulsory. He pointed out that a circular issued by University produced before Education Tribunal wherein clarification was issued by University contending that those employees who joined services after 01-04-1982 in the University services, pension scheme applies automatically and such teachers would have no option. The learned advocate Shri G.M. Joshi also pointed out the decision of this Court in the case of Dr. Nalini V. Dave v. Government of Gujarat & ors. reported in 2005(3)GLR 1844 wherein under similar background a

teacher employed by Saurashtra University was ordered to be paid pensionary benefits on the basis of Government Resolution dated 15-10-1984 though she had opted for pension scheme by exercising her option in writing. It was held that pension scheme was automatic and there was no question of exercising the option. Failure on part of teachers to exercise option therefore, was not held to be fatal to her right to receive pensionary benefit.

8. The learned advocate Shri Joshi also pointed out that after his engagement in the South Gujarat University, employer's contribution towards Provident Fund stopped. This would be an indication to demonstrate that the employer also treated respondent no.1 has having been governed by the pension scheme.

9. Having considered rival submissions it would appear that the crucial question is whether respondent no.1 can be stated to have joined services of the University on 01-10-1984 or right from the time he was discharged from his duties in private affiliated aided college. If it is found that respondent no.1 joined services of South Gujarat University only on 01-10-1984 and the earlier services of respondent no.1 cannot be said to

have any bearing on question of applicability of the pension scheme pursuant to Government Resolution dated 15-10-1984, his case for receiving pension would get a boost. On the other hand, if it is found that respondent no.1 who had served in private affiliated aided college right from 1964 and switched over to the university services on 01-10-1984 after tendering technical resignation, joined his duties immediately on the next date in the University Services and that therefore, respondent no.1 should be treated to have been in service prior to 01-04-1982, the State Government would be justified in contending that Tribunal erred in granting pensionary benefits to the respondent no.1.

10. There is however, considerable force in the submissions made by the learned advocate Shri Joshi that under identical situation, Learned Single Judge of this Court had made pensionary benefits available to the teacher in the case of Dr. Nalini V. Dave v. Government of Gujarat & ors(Supra).

11. In the said case also the petitioner had discharged duties in various colleges right from 1966 to 08-07-1985 when after getting relived from the private

college, she joined as a Lecturer in the Department of Commerce in Saurashtra University on the very same date. In the said case also her earlier service came to be considered continuous for the purpose of her total length of service including pensionary benefits. Accordingly the entire service was considered as qualifying service for the purpose of pensionary benefits. Despite this factual aspect, Learned Single Judge of this Court found that Government Resolution cannot be interpreted so as to mean that the petitioner therein would be dis-entitled from receiving pension for not having exercised option. It was held that having joined the service in University on 08-07-1985, she would be governed by pension scheme as per Government Resolution dated 15-10-1984. Non-exercising of the option therefore, was not taken as a factor to dis-entitle her from receiving pensionary benefits.

12. The ratio laid down in case of Dr. Nalini V. Dave v. Government of Gujarat & ors(Supra) would squarely apply in the present case also. The respondent no.1 herein had discharged duties in private colleges from 1966 to 01-10-1984. Having resigned from his services he immediately joined as Reader in South Gujarat University on 01-10-1984. Thus on 01-10-1984 when he

joined University Services only option available to him was to be governed by the pension scheme as held by this Court in the case of Dr. Nalini V. Dave v. Government of Gujarat & ors(Supra). He therefore, had no option to exercise. His misconceived communication dated 10-10-1985 therefore, cannot be taken to be the factor against him to deny the pensionary benefits. If it is found as has been so in case of Dr. Nalini V. Dave v. Government of Gujarat & ors(Supra) that for such of the teachers who joined services after 01-04-1982 even with past background of employment in private colleges, option of continuing in CPF Scheme was not in existence and that pension scheme applied compulsorily and automatically, the assertion of the respondent no.1 that he wishes to continue in the CPF Scheme would be of no consequence. The factor that the employer stopped contributing towards Provident Fund of the respondent no.1 is one more indication of the stand of the University.

13.Therefore, following the decision in case of Dr. Nalini V. Dave v. Government of Gujarat & ors(Supra), I find that the Gujarat Universities Services Tribunal committed no error in allowing the application of the respondent no.1. I am conscious of the fact that there

are some arguable points raised by the State Government. One of the relevant facts which appears attractive is that respondent no.1 not only joined University Service immediately after tendering resignation from private college, but also got all benefits of continuation of entire service for the purpose of qualifying service for post-retirement benefits. The question therefore, immediately arises is whether respondent no.1 can be said to have joined service on 01-10-1984 as is contended by the learned advocate for respondent no.1 or whether he should be deemed to have been in service right from 1964 so as to require him to exercise his option pursuant to Government Resolution dated 15-10-1984. One more relevant aspect here is that the resolution makes pension scheme applicable not only to the teaching staff of the University but to all the members of the teaching staff of private affiliated aided arts,commerce and science colleges in which respondent no.1 was employed prior to his appointment in the South Gujarat University. However by the principles of precedence and judicial discipline, I am bound by the decision rendered by Learned Single Judge and respectfully following the ratio laid down therein, I find that it is not necessary to disturb the decision

of the University Tribunal. The petition is therefore, rejected. Rule is discharged with no order as to costs. Interim relief is vacated.

(Akil Kureshi,J.)

(raghu)